

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 997 of 1997****For Approval and Signature:****HONOURABLE MR.JUSTICE M.R. SHAH**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

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BANSIDHAR AUDHYOGIC SEVA SAHAKARI MANDALI LIMITED - Petitioner(s)**Versus****GUJARAT ELECTRICITY BOARD & 1 - Respondent(s)**

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Appearance :

MR SHIRISH JOSHI for Petitioner(s) : 1,
 MR HS MUNSHAW for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**Date : 28/11/2005****ORAL JUDGMENT**

1. In this petition under Articles 226 and 227 of the Constitution of India, the petitioner has prayed for an appropriate writ, direction or order directing the respondents to allow and grant application submitted by

the petitioner for a new electricity connection.

2. The petitioner is a co-operative society duly registered under the Gujarat Co-operative Societies Act. It is the contention of the petitioner that the land bearing Survey No.637 where the society is located was originally owned by one Delite Ceramics Private Limited. The said Delite Ceramics Private Limited (herein after referred to as the 'Erstwhile Owner') had taken some loans from the Bank of Baroda and had committed defaults in making repayment of loans which resulted into the Special Civil Suit No.186/85 filed by the Bank of Baroda against the erstwhile owner. The said suit came to be decreed and in the execution proceedings in pursuance of the said decree, the entire properties of the erstwhile owner were declared for auction. It is the case of the petitioner that before holding such auction, a public notice was given in the local newspaper by the Court Commissioner on 10th June, 1991 but no claim was presented by the respondents in response to the said notice. It appears that the petitioner-society purchased the said land in the public auction held by the Court Commissioner and thereafter, the petitioner-society applied for 10 kw power electricity connection by making an application,

which is at annexure-A to the petition, however, the respondents refused to grant the said application on the ground that no such permission can be given and no power can be given till the dues of the erstwhile owner/Delite Ceramics Private Limited are paid and therefore, the petitioner has preferred the present Special Civil Application under Articles 226 and 227 of the Constitution of India.

3. Shri Shirish Joshi, learned advocate appearing on behalf of the petitioner has relied upon the judgment of the Hon'ble Supreme Court in case of Isha Marbles V. Bihar State Electricity Board reported in (1995) 2 SCC P-648 in support of his submission that as the petitioner has purchased the property of the erstwhile owner in a public auction and there is no privity of contract between the petitioner and the Gujarat Electricity Board, the Gujarat Electricity Board cannot insist for the payment of dues of the erstwhile owner from the petitioner and therefore, it is requested to allow the present Special Civil Application.

4. Shri H.S. Munshaw, learned advocate appearing on behalf of the respondents is not in a position to dispute the

fact that the dispute in question is covered by the aforesaid judgment and order of the Hon'ble Supreme Court. However, he has submitted that now the condition No.2-J is amended/added in the condition of supply by which the Gujarat Electricity Board can insist for recovery of the dues of the erstwhile owner from the subsequent purchaser.

5.It is required to be noted that the condition No.2-J is the condition which has been amended/added in the year 2001 and the case on hand is of the year 1997. Even this Court while admitting the present Special Civil Application by order dated 12.3.1997 by way of interim relief directed the Gujarat Electricity Board to supply the electricity power to the unit of the petitioner by recovering necessary charges for such supply having regard to the ratio laid down in case of Isha Marbles. The Condition No.2-J cannot be made applicable retrospectively. Under the circumstances, the case on hand is covered by the judgment of the Hon'ble Supreme Court in case of Isha Marbles (supra). Under the circumstances, the petition is required to be allowed.

6.For the reasons stated above, the petition succeeds.

The respondents are restrained from recovering the dues of the previous consumer/erstwhile owner and are directed to supply 10 kw power as per the application of the petitioner which is at annexure-A to the petition in accordance with the rules without insisting for payment of the dues of the erstwhile owner i.e. M/s. Delite Ceramics Private Limited.

7.Rule is made absolute to the aforesaid extent, however, there will be no order as to costs.

(M.R.SHAH, J.)

kdc.